

RECEIVED

NOV - 2 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re the Matter of:)
)
)

Amendment of Section 73.202(b), FM Table)
of Allotments to substitute Channel 267C1)
for Channel 280C3, Gering, Nebraska at)
coordinates 41-50-23 and 103-49-36, and)
substitute Channel 280C1 for Channel)
287C at Pine Bluffs, Wyoming at)
coordinates 41-38-44 and 104-14-27, and)
substitute Channel 239C3 for Channel 267C)
at Bridgeport, Nebraska at coordinates)
41-24-41 and 102-41-10)
_____)

MM Docket No. 97-106
RM-9071
RM-9741

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

**ERRATUM
TO
REPLY COMMENTS
TO COUNTERPROPOSAL**

Tracy Broadcasting Corporation ("TBC"), by its attorneys and pursuant to §§1.415 and 420 of the Commission's Rules and Regulations, hereby submits its Erratum to its Reply Comments in the above-referenced proceeding filed with the FCC on October 29, 1999. Pursuant to Public Notice, Report No. 2364, released October 14, 1999 ("Notice"), reply comments to the Counterproposal in this proceeding were due on October 29, 1999 for Rulemaking 9741.

No. of Copies rec'd OK
List ABCDE

Conclusion

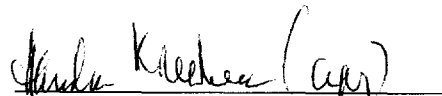
Accordingly, please associate these Reply Comments to Counterproposal with

RM-9741

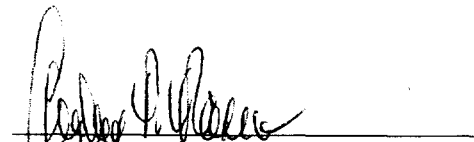
Respectfully submitted,

**TRACY BROADCASTING
CORPORATION**

By:



K. Harsha Krishnan, Esq.
Halgiman and Lottner, P.C.
633 17th Street, Suite 2700
Denver, CO 80202
(303) 292-1200
(303) 292-1300 (Facsimile)



Audrey P. Rasmussen, Esq.
O'Connor & Hannan, L.L.P.
1666 K Street, N.W., Suite 500
Washington, D.C. 20006-2803
(202) 887-1431
(202) 466-2198 (Facsimile)

Dated: November 2, 1999

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED
OCT 29 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re the Matter of:)

Amendment of Section 73.202(b), FM Table)
of Allotments to substitute Channel 267C1)
for Channel 280C3, Gering, Nebraska at)
coordinates 41-50-23 and 103-49-36, and)
substitute Channel 280C1 for Channel)
287C at Pine Bluffs, Wyoming at)
coordinates 41-38-44 and 104-14-27 and)
substitute Channel 239C3 for Channel 267C)
at Bridgeport, Nebraska at coordinates)
41-24-41 and 102-41-10¹)
_____ /

MM Docket No. 97-106
RM-9071

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

**REPLY COMMENTS TO
COUNTERPROPOSAL**

Tracy Broadcasting Corporation ("TBC"), by its attorneys and pursuant to §§1.415 and 420 of the Commission's Rules and Regulations, hereby submits its Reply Comments in the above-referenced proceeding. Pursuant to Public Notice, Report No. 2364, released October 14, 1999 ("Notice"), reply comments to the Counterproposal in this proceeding are due on October 29, 1999.

¹ As discussed in these Reply Comments, the Federal Communications Commission Public Notice Report No. 2364, released October 14, 1999, listed incorrect coordinates for Bridgeport. The counterproposal proposed a new set of coordinates for Bridgeport at 41-39-00; 103-06-00.

I. Public Notice Does Not Reflect TBC's Counterproposal

The above-referenced Public Notice did not correctly reflect TBC's Counterproposal. The FCC listed the coordinates for Bridgeport as 41-24-41 and 102-41-10. As pointed out in Exhibits 1 and 2, the FCC has incorrectly used the existing TBC coordinates for Bridgeport.

Exhibit 2 reflects the correct coordinates as filed in the counterproposal and is a site map showing the proposed relocation south of the city of license at 41-39-00 and 103-06-00, to meet the requirements of Section 73.211(b) of the FCC Rules and Regulations. By this proposed relocation, TBC will be able to place a city grade signal over the city of license. If the existing coordinates were used, it would not be possible within the height and power limitations of a C3 authorization to place such a signal over Bridgeport. Accordingly, the FCC should use the **proposed** coordinates in determining the acceptability of the counterproposal.

II. Background

On March 19, 1997, the Federal Communications Commission ("Commission") released a *Notice of Proposed Rule Making and Order to Show Cause* (the "Notice"), DA 97-585.² This Notice responded to a February 25, 1997 Petition for Rulemaking and Order to Show Cause why TBC's license for KOLT-FM should not be modified to substitute Channel 239C for Channel 280C2, which was filed by TSB II, Inc. TBC holds licenses for stations KMOR-FM and KOLT (AM), Scottsbluff, Nebraska; KOAQ (AM), Terrytown, Nebraska; KBFZ-FM, Kimball, Nebraska; and KOLT-FM, Gering, Nebraska. TBC also holds FM Broadcast Station Construction Permits for KASX (FM), Pine Bluffs, Wyoming (Channel 287C) and KAWQ (FM), Bridgeport, Nebraska (Channel 267C).

² On April 4, 1997, the FCC issued an Erratum and the rulemaking number was corrected to RM-9071, instead of RM-9044.

TBC filed its original Answer to the Notice on May 19, 1997. In its Answer, TBC proposed a counterproposal to TSB II, Inc.'s proposal, which would provide a higher level of service in the public interest, whereby the FM Table of Allotments should be amended to substitute Channel 280C1, (which is presently licensed to TBC at Gering, Nebraska as Channel 280C3) for Channel 287C2 which is presently licensed to TBC at Pine Bluffs, Wyoming. This substitution committed TBC to a change of the location of the broadcast facilities as outlined in the engineering exhibit accompanying TBC's "counterproposal". Further, TBC proposed to substitute Channel 267C for Channel 280C2 which had already been granted for TBC for license KOLT-FM (which channel TBC proposes to substitute at Pine Bluffs, Wyoming), and to substitute Channel 239C3 for Channel 267C1 at Bridgeport, Nebraska. In sum, TBC proposed that the Channels 267C1, 280C1 and 239C3 (which was proposed by TSB II, Inc.) should be allocated respectively to Gering, Pine Bluffs and Bridgeport. As was previously stated, with the exception of the assignment of 239C3 to Bridgeport, Nebraska, the frequency changes requested by TBC affected only TBC's currently licensed or authorized facilities.

III. TBC's Counterproposal is In the Public Interest

As stated above, TBC's counterproposal merely requested that its already licensed and/or proposed Channels be substituted and allocated to TBC's various cities of license, stating that no other party should be affected by its counterproposal. TBC's counterproposal further asserted that it would provide first full-time aural service to 300 people and second full-time service to 2,017 additional persons, making radio service available to previously neglected rural listeners. As a consequence, TBC's counterproposal is in the public interest. TBC would serve higher allotment priorities than the TSB II, Inc. proposal and thus it receives dispositive preferences under the Commission's policies. See Revision of FM Assignment Policies & Procedures, 90 FCC

2d 86, 90 (1982). Accordingly, TBC's counterproposal best effectuates the Section 307(b) statutory mandate.

IV. Section 316(a)(1) Requires Fair Treatment to TBC

Section 316(a)(1) of the Communications Act of 1934, as Amended, requires fair treatment to TBC in connection with its counterproposal. If the FCC grants the counterproposal, TBC submits that its anticipated applications for the new allocations must be treated as minor applications. If the FCC treated them as major applications, they would be subject to competing applications which ultimately could result in a loss to TBC of the three previously authorized licenses. Such a scenario would be grossly unfair to TBC and would result in a violation of TBC's rights as a licensee under Section 316(a)(1). This section requires a notice and opportunity to comment by the affected licensee.

Accordingly, TBC requests that the FCC allow TBC to file minor applications for these new allocations or, in the alternative, to give TBC notice of the action to require major applications in connection with this counterproposal and reasonable opportunity to protest the order of modification. Further, TBC will oppose any FCC directives that competing applications will be accepted.

Interest Statement

Pursuant to the conditions outlined above, upon the FCC's approval of the changes requested in its Counterproposal and if granted these Channels, TBC will promptly build the FM facilities.

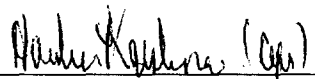
Conclusion

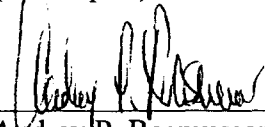
As argued in TBC's Answer and Reply comments, the Commission should deny TSB II, Inc.'s proposal and adopt TBC's Counterproposal. TBC's Counterproposal will create a 40% net service gain for its Pine Bluffs station and increase the existing coverage of the Gering station, bring first full-time aural service to 300 people and bring second full-time aural service to another 2,017 people.

Respectfully submitted,

**TRACY BROADCASTING
CORPORATION**

By:


K. Harsha Krishnan, Esq.
Haligman and Lottner, P.C.
633 17th Street, Suite 2700
Denver, Colorado 80202
(303) 292-1200; (303) 292-1300
(Telecopier)

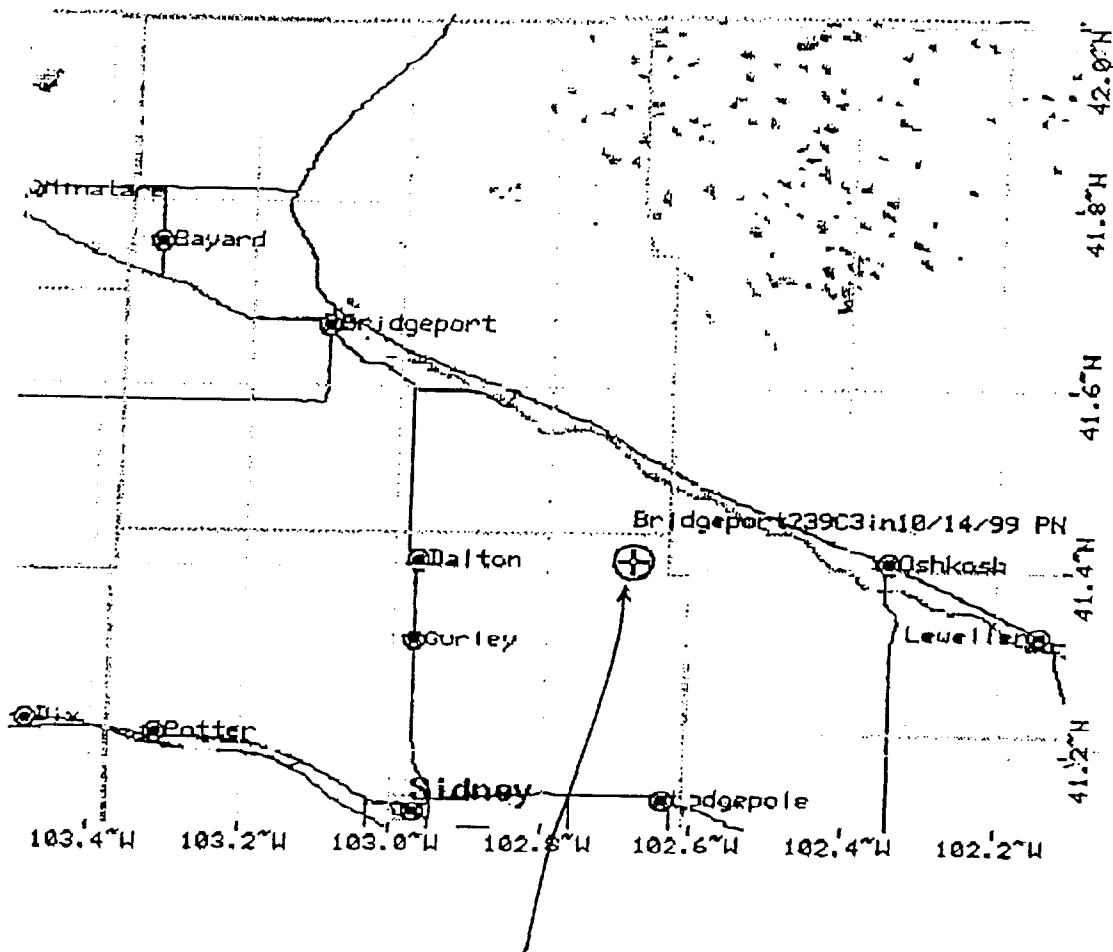

Audrey P. Rasmussen
O'Connor & Hannan, L.L.P.
1666 K Street, N.W., Suite 500
Washington, D.C. 20006-2803
(202) 887-1431

Dated: October 29, 1999

83715_1.DOC

EXHIBIT 1

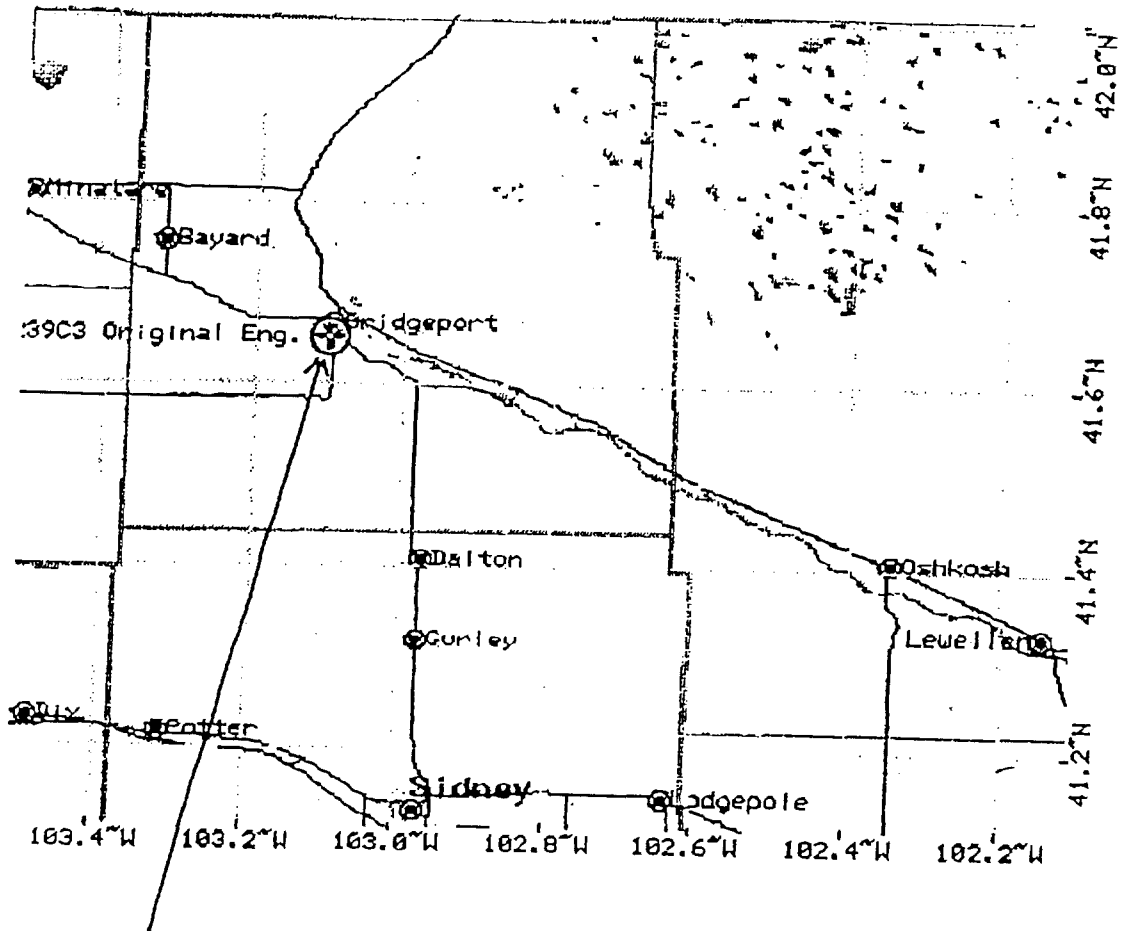
BRIDGEPORT, NEBRASKA
Existing Coordinates



This map shows the location
of the site the Commission
used as coordinates for C-3
for Bridgeport in Public Notice
of 10/14/99 — THESE ARE THE
coordinates for the original
Bridgeport FM License — CALL LETTERS
KAWQ.

EXHIBIT 2

BRIDGEPORT, NEBRASKA
Proposed Coordinates



This map shows location of
Proposed Site for Bridgeport -
239C3 - As set out
in the ENGINEERING that
was filed with original
counter proposal

CERTIFICATE OF SERVICE

I, Gladys L. Nichols, certify that I served this date a copy of the foregoing **REPLY COMMENTS IN SUPPORT OF COUNTERPROPOSAL** on the parties to this proceeding, by first-class mail, postage prepaid, at the addresses listed below:

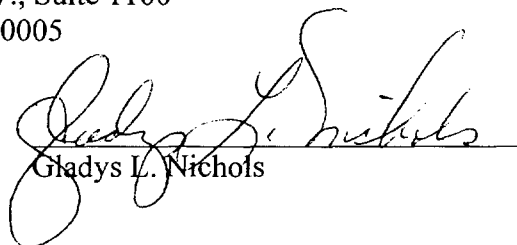
Magalie Salas Roman, Secretary
Federal Communications Commission
Washington, D.C. 20554

Sharon P. McDonald
Mass Media Bureau
Federal Communications Commission
Washington, D.C. 20554

Elizabeth A. Sims, Esq.
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, NW
Suite 200
Washington, D.C. 20036-3101

David H. Montgomery, Managing Partner
Montgomery Broadcasting Limited Liability Company
1806 Capitol Avenue
Cheyenne, Wyoming 82001

Kaye, Scholer, Fierman, Hays & Handler, LLP
901 15th Street, N.W., Suite 1100
Washington, D.C. 20005


Gladys L. Nichols

Executed on October 29, 1999

CERTIFICATE OF SERVICE

I, Gladys L. Nichols, certify that I served this date a copy of the foregoing **ERRATUM TO REPLY COMMENTS TO COUNTERPROPOSAL** on the parties to this proceeding, by first class mail at the addresses listed below:

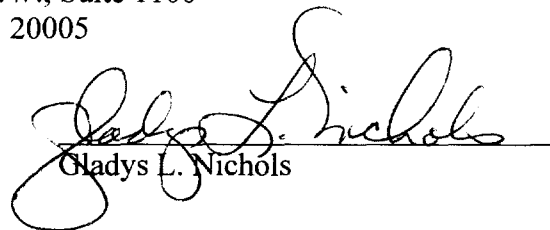
Magalie Salas Roman, Secretary
Federal Communications Commission
Washington, D.C. 20554

Sharon P. McDonald
Mass Media Bureau
Federal Communications Commission
Washington, D.C. 20554

Elizabeth A. Sims, Esq.
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, NW
Suite 200
Washington, D.C. 20036-3101

David H. Montgomery, Managing Partner
Montgomery Broadcasting Limited Liability Company
1806 Capitol Avenue
Cheyenne, Wyoming 82001

Kaye, Scholer, Fierman, Hays & Handler, LLP
901 15th Street, N.W., Suite 1100
Washington, D.C. 20005


Gladys L. Nichols

Executed on November 2, 1999.